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FEDERAL, COMMUNICATIONS COMMISSION
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In the Matter of)
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Implementation of Section 255)
of the Telecommunications Act)
of 1996)
)
Access to Telecommunications)
Services, Telecommunications)
Equipment, and Customer)
Premises Equipment By Persons)
with Disabilities)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 96-198

AT&T COMMENTS

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Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("**AT&T**") submits these comments on the Commission's **NPRM** in this proceeding to implement Section 255 of the Communications Act of 1934, as amended (47 U.S.C. § 255).¹

1 Implementation of Section 255 of the Telecommuni-
cations Act of 1996/Access to Telecommunications
Services, Telecommunications Equipment, and Customer
Premises Equipment by Persons with Disabilities
 WT Docket No. 96-198, Notice of Proposed Rulemaking,
 FCC 98-55, released April 20, 1998 ("NPRM").

² See 47 U.S.C. § 255(b) - (c) .

statute requires both manufacturers and service providers to ensure that their offerings are compatible with existing peripheral devices and specialized customer premises equipment ("CPE") commonly used by persons with disabilities, to the extent that satisfaction of the accessibility obligation is not "readily achievable."³ These statutory provisions codify for equipment and services providers obligations similar to those already applicable for access to premises under the Americans with Disabilities Act of 1990 ("ADA").⁴

In an earlier phase of this proceeding, to ensure effectuation of the "broad but practical mandate" of Section 255 the Commission issued a Notice of Inquiry ("NOI") soliciting information on a variety of equipment and service accessibility issues, and received comments from numerous parties, including AT&T, representing a wide spectrum of interests.⁵ The Commission's proposals in the **NPRM** are framed on the basis of that input, as

³ 47 U.S.C. § 255(d).

⁴ Pub. L. 101-336, 104 Stat. 327 (1990), codified at 42 U.S.C. §§ 12101-12213.

⁵ See Implementation of Section 255 of the Telecommunications Act of 1996/Access to Telecommunications Services. Telecommunications Equipment, and Customer Premises Equipment by Persons with Disabilities, 11 FCC Rcd 19152 (1996). See also AT&T Comments in id., filed October 28, 1996 ("AT&T NO1 Comments"); AT&T Reply Comments in id., filed November 27, 1996 ("AT&T NO1 Reply Comments").

well as consultations with the Architectural and Transportation Barriers Compliance Board ("**Access** Board"), the report of its Telecommunications Access Advisory Committee ("**TAAC** Report"), and the Access Board's Telecommunications Act Accessibility Guidelines for telecommunications equipment.⁶

STATEMENT

AT&T has long been a leader in addressing the telecommunications needs of persons with disabilities,' and fully supports the Commission's objective in this proceeding of improving the accessibility of telecommunications equipment and services to this segment of consumers. As the **NPRM** (§ 3) also properly recognizes, however, the Commission must execute its statutory mandate under Section 255 "in a practical, commonsense manner" that will achieve improved accessibility without constraining the ability of manufacturers and service providers to develop and deploy innovative and improved technology in the marketplace.* In this initial round of

⁶ See **NPRM**, §§ 11-20.

⁷ See AT&T NOI Comments, pp. 4-5 and 8 n.11 (summarizing the extensive background of AT&T and AT&T Wireless Services in serving the needs of persons with disabilities).

⁸ See also **NOI**, 11 FCC Rcd at 19159-60 (§ 16) (acknowledging need to implement Section 255 without "constraining competitive innovation"). The Commission's prior decisions under the ADA have likewise recognized the need to expand the

(footnote continued on following page)

comments, AT&T addresses three major aspects of the NPRM: (a) the appropriate scope of Section 255; (b) the interpretation of certain statutory requirements; and (c) the process of implementation of Section 255 through the Commission's complaint process.

A. Statutory Scope

The NPRM (§§ 35-43) notes that Section 255 uses the terms "telecommunications" and "telecommunications service," which are defined elsewhere in the 1996 Act in a manner that tracks the Commission's standard for a "basic service" under its Computer Inquiry II ("CI-II") decisions and rules.⁹ The Commission therefore tentatively concludes that Section 255 requirements are inapplicable to information services, which are separately defined in Section 153(20) and which are not regulated under Title II of the Communications Act.

NPRM, § 42.

(Footnote continued from prior page)

availability of services to the disabled without discouraging the development of new and improved technology. See Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990, 6 FCC Rcd 4657 (1991).

⁹ Compare 47 U.S.C. § 153(43) (defining "telecommunications" as transmission "without change in the form or content of the information as sent and received") with 47 C.F.R. § 64.702 (implementing CI-II orders by defining enhanced services as those "that act on the form, content, code, protocol or similar aspects of the subscriber's transmitted information").

The Commission's tentative conclusion is clearly correct. The definitions of these key terms used in Section 255 were contemporaneously enacted, and as the **NPRM** points out (§ 35) there is no indication in the legislative history that Congress intended them "to have any different, specialized meaning for purposes of accessibility." In fact, as AT&T showed in the **NOI**, there was widespread recognition among commenters there that information or enhanced services are not subject to Section 255 **requirements**.¹⁰

In marked contrast to Section 255's reliance on these statutorily defined terms, the Communications Act does not contain a definition of the phrase "provider of telecommunications **service**" in Section 255. The **NPRM** (§§ 44-45) therefore proposes to adopt an inclusive definition of the term "**provider**," encompassing all "entities that supply or furnish telecommunications services, as well as entities that make available such services." AT&T supports the Commission's proposed definition, which is fully consistent with the scope of

¹⁰ **See** AT&T NO1 Reply Comments, p. 3 n.5. While exclusion of enhanced or information services from Section 255 requirements is thus required, the inclusion of basic (or adjunct to basic) services in Section 255 should not be deemed to connote that improvements to the accessibility of those services is necessarily "readily achievable" under the statute. In many cases, implementing such modifications may often present substantial cost and technical barriers.

the term "provide" used elsewhere in the Communications Act? Equally important, applying Section 255 to both facilities-based carriers and other entities that offer telecommunication service, such as resellers and aggregators, is clearly calculated to further the underlying statutory objective of making such services widely accessible to persons with **disabilities**.¹²

B. **Statutory Requirements**

As AT&T showed in the **NOI**,¹³ and as the **NPRM** (§ 67) acknowledges, the substantive legal requirements under Section 255 are derived from the ADA and other disability law doctrines developed in the context of physical access to facilities. These principles must therefore be adapted to the circumstances of the

¹¹ **NPRM**, § 44 (citing 47 U.S.C. §§ 222(e), 225(c)).

¹² Exempting any category of service providers from the scope of Section 255 would not simply disserve the interests of persons with disabilities in obtaining the broadest possible choice among services, features, and prices. Any such exclusion would also seriously skew the telecommunications marketplace by placing the potentially substantial costs of Section 255 compliance solely on a limited group of service providers, a result that the **NOI** (§ 18) correctly noted would "**distort** competitive incentives."

While all basic services providers should be subject to Section 255, not all of their offerings need provide full accessibility for all persons with disabilities; it is enough if some of a provider's offerings satisfy the needs of a given subset of such persons.

¹³ See AT&T NO1 Comments, pp. 5-6; AT&T NO1 Reply Comments, p. 4 n.8.

telecommunications equipment and services markets in light of the Communications Act's regulatory regime and the objectives of Section 255. *Id.* The **NPRM** therefore seeks comment on proposed applications of certain defined terms in the context of telecommunications offerings.

AT&T supports the Commission's proposal (§ 70) to treat the term "**disability**" coextensively with the three-pronged test already applicable under the **ADA**.¹⁴ Because there is already a well-developed body of case law under the ADA, this approach will provide interested persons and the Commission with immediate guidance regarding their corresponding legal obligations under Section 255.¹⁵ For similar reasons, AT&T supports the Commission's proposal (**NPRM**, §§ 71-80) to adopt for purposes of the Commission's application of Section 255 the definitions of "**accessible**" and "**usable**" already developed by the Access Board.

¹⁴ See 42 U.S.C. § 12102(a)(2) (defining "**disability**" as a "**physical** or mental impairment that substantially limits one or more of the major life activities of an individual," together with either a record of such impairment or being regarded as having such an impairment).

¹⁵ As the **NPRM** (§ 70) also notes, the Access Board has developed a list of common disabilities applicable in the Section 255 context. While the **NPRM** points out that the list is "[n]either exhaustive [n]or final," the Commission proposes to use those classifications in analyzing equipment and service offerings. AT&T believes that the Access Board's categorization will provide additional useful guidance to firms subject to

The **NPRM** (¶¶ 94-99) also proposes to construe the term "readily achievable" borrowed from the ADA in Section 255 to mean "easily accomplishable and able to be carried out without much difficulty or expense," and to use the four-pronged set of factors under the ADA solely as pertinent guidance for developing criteria relevant to the telecommunications context. Given the controlling differences between physical access to premises, addressed by the ADA, and consumers' access to telecommunications equipment and services which AT&T and other commenters showed in the **NOI**, the Commission's tentative decision to fashion its own set of analytical factors for applying the "readily achievable" standard is indisputably correct.

The **NPRM** thus proposes a set of three **"telecommunications factors"** to provide the framework for the Commission's Section 255 analysis: feasibility, expense and practicality. AT&T believes that all of these factors are properly included in assessing whether a feature or modification is "readily achievable." In particular, the Commission's proposed analytical framework properly includes the relative expense when accessibility issues are taken into account during the

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Section 255, and does not oppose the Commission's planned reliance on that list.

design phase of a product or service, rather than at a later point in its deployment. **See NPRM, ¶ 105.** This aspect of the Commission's evaluative process will create an appropriate economic incentive for manufacturers and service providers to seek input from persons with disabilities, who are most knowledgeable about the use of those offerings, during the design and product development **stages.**¹⁶

However, AT&T remains concerned, just as it was in the **NOI**,¹⁷ that in determining what is "**readily achievable**" the Commission should not inadvertently create any **de facto** exemption from Section 255 obligations based solely on a "**means test.**" The expense of implementing a feature to permit or improve accessibility and the relative resources of the entity in question are only part of the criteria to be weighed in evaluating whether that modification should be deemed "**readily achievable.**" These cost factors should not be accorded determinative weight; otherwise, it is clearly foreseeable that many manufacturers and service providers will attempt to avoid their Section 255 obligations on

¹⁶ As AT&T noted in the **NOI** (Comments, pp. 7-8), since 1984 it has regularly received advice on incorporating accessibility features in its offerings from a standing consumer panel composed of advocates for persons with disabilities.

¹⁷ **See** AT&T NOI Comments, pp. 9-10.

this basis, thereby depriving persons with disabilities of the fullest possible range of choice among competing providers. The Commission must take special care in this proceeding to avoid such an untoward **result**.¹⁸

C. Implementation Process

Finally, the **NPRM** (§§ 124-172) proposes a "two - phase program" for resolving consumer inquiries and complaints regarding Section 255 compliance, without the need for resort in all such cases to the Commission's extant formal complaint **procedures**.¹⁹ The first phase of this proposed program establishes a "**fast-track**" process for handling of customer inquiries and complaints by manufacturers and service providers. **NPRM**, §§ 126-143. To the extent that the fast-track procedure does not

¹⁸ The **NPRM** (§§ 62-66) also tentatively concludes Section 251(a) of the Communications Act requires service providers to configure their networks to comply with Section 255, but does not require them to assure accessibility characteristics of their underlying network equipment. Manufacturers should be obligated to assure that equipment (including software), through standard interfaces and signaling, allows service providers to maintain statutory compliance.

¹⁹ See Implementation of the Telecommunications Act of 1996; Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, 12 FCC Rcd 22497 (1997), erratum (released December 10, 1997) ("Formal Complaint Order"); 47 C.F.R. §§ 1.720 et seq. Because the Commission plans to act in a timely fashion to adopt such new procedures for handling Section 255 complaints, the **NPRM** properly concludes (§§ 175-177) that there is no need for the Commission to adopt interim rules for processing such complaints.

obviate the need for further Commission proceedings, the **NPRM** (§§144-156) also proposes creation of a further round of informal and formal dispute resolution procedures.

AT&T supports the Commission's conclusion that, on balance, consumers raising Section 255 claims should not be required to resort to the formal complaint process, and that informal procedures (including, where possible, consensual resolution without the need for Commission intervention) can better serve the public **interest**.²⁰ At the same time, however, the Commission must assure that the Section 255 complaint resolution process serves the **NPRM's** dual objectives (§ 124) of responsiveness to consumers and efficient allocation of resources without compromising due process requirements and fundamental fairness to the rights of manufacturers and service providers. As shown below, the **NPRM's** proposed procedures require modification to assure this result.

²⁰ When the **NOI** was released, the Commission had not yet finalized its new formal complaint rules. Accordingly, AT&T stated then that it would be inappropriate for the Commission "to initiate a separate rulemaking on Section 255 complaint procedures ~~at this time~~." AT&T NOI Comments, p. 13 (emphasis supplied). Now that formal complaint rules have been adopted, the Commission and interested parties are better able to assess the suitability of those requirements in the Section 255 context.

Specifically, the **NPRM's** proposed five business day deadline for respondents to initially report to the Commission on their handling of a **"fast-track"** complaint (**NPRM**, ¶¶ 135-137) is facially insufficient to allow such parties a meaningful opportunity to undertake an investigation of Section 255 complaints, which may frequently raise complex technical and service **issues**.²¹ The proposed deadline is all the more burdensome in light of the Commission's expectation (¶ 137) that respondents will simultaneously attempt both to investigate the claim and to resolve the complainant's dispute. It is unlikely that the resulting **"informal** progress reports" generated under this severe time constraint will be of any significant use to either the Commission or the parties. Extending the deadline for such reporting to fifteen business days (which approximates the period normally allowed by the Commission for responding to other informal complaints under Section 1.717) will permit a

²¹ To assure that respondents can address **"fast-track"** complaints expeditiously, the Commission should allow manufacturers and service providers to designate different contact points within those companies for different product or service offerings, provided that the contact points' responsibilities are stated with sufficient specificity to allow the Commission accurately to refer **"fast-track"** complaints. **See NPRM**, ¶¶ 132-134. The contact lists should not, however, be used for the "secondary function" as a source of accessibility information to the public (**id.**, ¶ 134); that outreach function differs significantly from complaint investigation and resolution.

more complete and useful investigation, and give parties sufficient time to informally resolve many disputes, without sacrificing the interest in expeditious disposition of such **complaints**.²²

Modifications are also required in the Commission's proposed "**second-phase** dispute **resolution**" procedures. As a threshold matter, the Commission should not permit complainants to bypass the "**fast-track**" process and proceed directly to invoking the dispute resolution process. Such an end run on the "**fast-track**" process is calculated only to unnecessarily burden manufacturers, service providers, and the Commission alike with disputes that the "fast-track" procedure will "frequently render unnecessary . . . by quickly resolving the consumer's **problem**." **NPRM**, ¶ 125. Even where it does not obviate the dispute, prior resort to the "**fast-track**" process can aid in developing a factual record and in narrowing or focusing the issues requiring

²² This schedule necessarily assumes that the Commission will adopt and rigorously enforce the **NPRM's** proposed requirement (¶ 131) that complainants specifically identify the product or service complained of, and describe fully how the equipment or service is allegedly inaccessible to persons with a particular disability or combination of disabilities. Absent such critical information, respondents cannot be expected to investigate the complaint or to resolve any claimed deficiency in their offerings.

resolution.²³ The **NPRM** thus clearly, and correctly, contemplates that complainants will first pursue the informal procedure, and only then "**continue** to dispute resolution." **NPRM**, ¶ 143 (emphasis supplied).²⁴

The **NPRM** (¶¶ 140-142, 147) also appears to contemplate that complaints which are not resolved satisfactorily through the "**fast-track**" process will usually be resolved through unspecified "**informal, investigative procedures,**" and that "**formal** adjudicatory procedures" will only be invoked in the Commission's discretion at the request of complainants. **See NPRM**, ¶ 147. Such a restriction could seriously prejudice the ability of manufacturers and service providers to demonstrate their compliance with Section 255 requirements and to avoid unwarranted liability for alleged violations of their statutory duties.

For example, as shown above reports submitted under the "**fast-track**" procedure (even as modified in these comments) will necessarily be compiled under

²³ For these reasons, the Commission's formal complaint rules require both parties to describe their efforts to resolve the dispute prior to initiation of the complaint proceeding. **See** 47 C.F.R. § 1.721(a) (8).

²⁴ Parties should have the option, either during the "**fast track**" process or afterwards, to timely pursue alternative dispute resolution ("**ADR**") before a mutually acceptable decisionmaker. However, the Commission should not attempt to compel **ADR**, or to "**farm out**" its fact-finding role to industry bodies, as the **NPRM** (¶¶ 157-160) appears to imply.

extreme time constraints; premising a finding of violation upon the Commission's review and analysis of such reports would thus deny the respondent a fair opportunity to prove the lawfulness of their conduct. Fundamental fairness and due process require that the Commission also allow manufacturers and service providers to request formal adjudicatory procedures in a Section 255 claim.²⁵

As the **NPRM** (§§ 162-166) also recognizes, the Commission should avoid any attempt in this proceeding to establish definitive and binding criteria for determining a respondent's compliance with Section 255 requirements. In the absence of a concrete factual record regarding a particularized product or service offering, it would be inappropriate for the Commission to specify a "laundry list" of applicable guidelines, as the **NPRM** (§ 166) itself points out. Rather, the activities described in this portion of the **NPRM** are simply "[e]xamples of the sorts of measures [the Commission] would credit" in determining a respondent's satisfaction of its statutory obligation to provide accessibility where "readily achievable." **NPRM**, § 165.

²⁵ However, the Commission can and should tailor those formal adjudicatory procedures to the particular context of Section 255; indeed, the **NPRM** (§§ 147-155) suggests a number of modifications to accommodate the circumstances in which these claims are addressed.

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CONCLUSION

For the reasons stated **above**, the Commission should adopt regulations **implementing** Section 255 in accordance with them **comments**.

Respectfully submitted,

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